

# **EXHIBIT 7**

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13 PURSUANT TO PROTECTIVE ORDER

18 | February 12, 2016

19 | 9:31 a.m. - 6:09 p.m.

21 | 555 Twin Dolphin Drive, 5th Floor

22 Redwood Shores, California

23 | REPORTED BY:

24 | James Beasley

25 | CSR No. 12807, CCR No. 835, RPR

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12 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

13 PURSUANT TO PROTECTIVE ORDER

17 Videotaped Deposition of KENNETH DUDA,  
18 Volume I, taken on behalf of the Plaintiff, at  
19 Quinn, Emanuel, Urquhart, & Sullivan, 555 Twin  
20 Dolphin Drive, 5th Floor, Redwood Shores,  
21 California, beginning at 9:31 a.m. and ending at  
22 6:09 p.m., on Friday, 12th day of February, 2016,  
23 before James Beasley, Registered Professional  
24 Reporter, California Certified Shorthand Reporter,  
25 CSR No. 12807.

1 behalf of Cisco.

2 MR. SILBERT: David Silbert, Keker & Van

3 Nest on behalf of Defendant Arista and the witness.

4 THE WITNESS: Kenneth Duda,

5 Arista Networks.

6 THE VIDEOGRAPHER: Thank you. Your

7 certified court reporter is James Beasley.

8 Would you please administer the oath.

9 ---

10 KENNETH DUDA,

11 being first duly sworn and/or affirmed by the

12 Certified Shorthand Reporter to tell the truth, the

13 whole truth and nothing but the truth, testified as

14 follows:

15 \* \* \*

16 E X A M I N A T I O N

17 \* \* \*

18 BY MR. PAK:

19 Q. Good morning, Mr. Duda.

20 A. Good morning.

21 Q. Can you please state your name for the

22 record.

23 A. My name is Kenneth Duda.

24 Q. I understand that you've been deposed a

25 number of times?

1 BY MR. PAK:

2 Q. Let me ask it this way. Mr. Duda, you're  
3 aware that Arista has many CLI commands in its  
4 interface that was copied from Cisco's CLI  
5 interface, true?

6 A. Yes.

7 Q. Okay. Sitting -- sitting here today, have  
8 you investigated the origin of the CLI commands that  
9 were copied from the Cisco interface to Arista's  
10 interface?

11 MR. SILBERT: Let me direct you to exclude  
12 from your answer any investigation or activity you  
13 undertook at the direction of counsel.

14 THE WITNESS: I have not made any  
15 investigation of the origin of those commands.

16 BY MR. PAK:

17 Q. And I want to set aside any privileged  
18 analysis or communications.

19 Are you aware of nonprivileged analyses or  
20 communications relating to the origin of CLI  
21 commands that were copied from Cisco's interface to  
22 Arista's interface?

23 A. I am not.

24 Q. Okay. Now, it's not a coincidence that  
25 Arista has CLI commands in its interface that were

1 copied from Cisco's interface, correct?

2 MR. SILBERT: Objection. Vague.

3 THE WITNESS: I don't know what you mean

4 "a coincidence." Obviously they were copied. That  
5 wasn't a coincidence, no.

6 BY MR. PAK:

7 Q. So you instructed your employees to copy  
8 CLI commands from Cisco's interface to Arista's  
9 interface, true?

10 A. Not -- not really. My instructions were  
11 that it's important for us to provide a familiar  
12 interface to our customers. If there's an industry  
13 standard around CLI commands, we should follow that  
14 as much as possible.

15 Q. We're going to get into a lot about  
16 industry standard discussion, Mr. Duda.

17 It's true, "yes" or "no," that you  
18 instructed your employees to look at Cisco's CLI  
19 commands and copy them into Arista's CLI interface?

20 MR. SILBERT: Objection. Asked and  
21 answered.

22 THE WITNESS: I don't feel like I ever  
23 instructed anybody to copy a CLI command, so I'm not  
24 aware of any instance of that. But I did instruct  
25 people to be aware of what other vendors did in

1 their CLI's, particularly Cisco.

2 BY MR. PAK:

3 Q. And to copy them?

4 A. No, I didn't instruct them to specifically  
5 copy the commands; I instructed them to be aware and  
6 to pick commands that were consistent with the  
7 industry standard.

8 Q. Are you denying that Arista has a policy  
9 of copying CLI commands from the Cisco interface to  
10 its CLI interface?

11 A. There's -- there's certainly no policy  
12 that you have to copy every command. But as I said  
13 before, we aim to provide our customers with a  
14 consistent experience to use familiar commands,  
15 particularly when those commands are widely used  
16 across many vendors. And we absolutely have a  
17 policy to make our customer's experience as seamless  
18 as possible.

19 Q. Mr. Duda, isn't it true that you and  
20 others at Arista slavishly copied the Cisco CLI  
21 commands?

22 A. I've said things to that effect and it's  
23 true in the sense that I meant it.

24 THE REPORTER: I'm sorry, can you repeat  
25 your answer.

1 BY MR. PAK:

2 Q. Welcome back, Mr. Duda.

3 A. Thank you.

4 Q. Are you familiar with -- let me step back.

5 You mentioned the RFCs that you submitted  
6 to the IETF relating to VXLAN and NVGRE.

7 Do you recall that?

8 A. I'm a co-author on those RFCs. I didn't  
9 submit them myself, but, yes, I do recall them.

10 Q. Did any of the RFCs that you co-authored  
11 and ultimately submitted to the IETF require a  
12 particular type of CLI command to be used?

13 A. No.

14 Q. Do any of the RFCs that you co-authored  
15 mandate a particular type of user interface?

16 A. No.

17 Q. Is it possible for a network equipment  
18 company to comply, for example, with the VXLAN  
19 standard by using a graphical user interface?

20 A. I -- I see no incompatibility between a  
21 graphical user interface and the VXLAN RFC. The  
22 VXLAN RFC doesn't call for any user interface at  
23 all. It describes a tunneling encapsulation and  
24 forwarding rules quite separate from --

25 THE REPORTER: Hold on. You're going to

1 have to slow down.

2 "It describes"...

3 THE WITNESS: A tunnelling encapsulation  
4 and forwarding rules, and not anything about the  
5 interface to manage those functions.

6 THE REPORTER: Thank you.

7 BY MR. PAK:

8 Q. And, Mr. Duda, are you -- sitting here  
9 today, are you aware of any industry standard that  
10 has actually been ratified by an industry standard  
11 setting organization that requires the use of a  
12 particular set of CLI commands?

13 A. I'm not aware of any specific requirements  
14 along those lines, though I believe there are  
15 several that suggest CLI commands or show CLI  
16 commands as examples.

17 Q. Okay. Are you aware of any industry  
18 standard that has actually been ratified by any  
19 industry standard setting organization that requires  
20 the use of a particular type of user interface?

21 A. What do you mean by: "Type of user  
22 interface"?

23 Q. Graphical versus command line versus other  
24 types of user interfaces.

25 A. I'm not aware of any standard that

1 requires the use of a graphical user interface.

2 Q. Are you aware of any industry standard  
3 that's actually been ratified by any industry  
4 standard organization that requires command-line  
5 interfaces to be used rather than graphical user  
6 interfaces?

7 A. Well, let's see. I'm not sure. There are  
8 standards that relate to management functions and  
9 define compatibility requirements; for example, the  
10 NETCONF standards define XML formats in which  
11 management data must be represented, so in some  
12 sense that's a type of interface, though typically  
13 the user interface would be built on -- on top of  
14 that.

15 So I'm not sure, but I can't think of  
16 anything offhand. Let's put it that way.

17 Q. Okay. Let me be very specific.

18 With respect to the CLI commands that are  
19 used in Arista's interface which overlap with  
20 Cisco's CLI commands, are you aware of any specific  
21 industry standard that has been adopted by an  
22 industry standard setting organization that mandates  
23 the use of those specific commands?

24 A. I am not.

25 Q. Okay. Is it also true, Mr. Duda, that

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1 copyrightability of CLI commands?

2 A. No, I'm not.

3 MR. SILBERT: Sean, while you're --

4 MR. PAK: Yeah.

5 MR. SILBERT: -- pausing, I just -- I  
6 meant to tell you, I considered this over the break  
7 and -- and considering the confidentiality  
8 restrictions on the transcript, if you want to ask  
9 him about his pending patent applications I'm not  
10 going to object to that.

11 MR. PAK: Okay. Thank you.

12 Q. You used the word "industry standard"  
13 earlier in response to some of my questions about  
14 CLI commands.

15 Do you recall that?

16 A. Generally, yes.

17 Q. Okay. Now, Mr. Duda, when you were using  
18 industry standard in that part of the testimony you  
19 were not talking about actual industry standards  
20 that have been ratified by an industry standard  
21 setting organization, correct?

22 MR. SILBERT: Object to the term "actual  
23 industry standards."

24 THE WITNESS: That's correct.

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1 BY MR. PAK:

2 Q. Okay. What is your definition of  
3 "industry standard" as you have used that term to  
4 describe CLI commands?

5 A. What I mean by "industry standard" is  
6 widely practiced throughout the industry, available  
7 in products from many different vendors, widely  
8 understood by customers and widely used by  
9 customers.

10 Q. Anything else?

11 A. The standard practice of the industry is  
12 what I mean by "industry standard."

13 Q. Do you have a view on behalf of Arista,  
14 sitting here today, setting aside any privileged  
15 communications or analyses, on whether a copyrighted  
16 work loses copyrightability because it is widely  
17 practiced or widely utilized?

18 A. I'm sorry, is this a legal question?

19 Maybe I didn't quite understand the question.

20 Q. Yeah. Do you have a view on behalf of  
21 Arista sitting here today, setting aside any  
22 privileged communications or analyses, on whether a  
23 copyrighted work loses copyrightability because it  
24 is widely practiced or widely utilized?

25 MR. SILBERT: Objection. Calls for a

1 gave earlier.

2           If -- Mr. Duda, is it true that there is  
3 no technical reason why Arista -- I don't want to  
4 use a double negative.

5           Technically speaking, Mr. Duda, is it  
6 possible for Arista to remove overlapping commands  
7 from its CLI interface, replace them with different  
8 commands compared to the Cisco CLI and yet still  
9 interoperate or comply with all of the various  
10 networking protocols and the industry standards  
11 adopted by industry standard organizations?

12           MR. SILBERT: Objection. Compound.

13           THE WITNESS: I can't think of any  
14 examples where changing the CLI command would cause  
15 us to lose compliance with a standard formally  
16 adopted by an industry standard setting body.

17 BY MR. PAK:

18           Q. Thank you. Are you an antitrust legal  
19 expert?

20           A. No.

21           Q. Okay. Setting aside any privileged  
22 communications or analyses, do you have a view on  
23 behalf of Arista on any antitrust or competition  
24 aspects of Cisco's use of CLI commands?

25           A. I do not.

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1 equipment; correct?

2 A. That's correct.

3 Q. Okay. So it's fair to say that one of the  
4 selling points used by Arista to sell its switching  
5 equipment is that your CLI has overlap with Cisco's  
6 CLI?

7 A. I think the way we would frame it is a  
8 little different. We would say that the investment  
9 that you've made as an organization in learning the  
10 industry standard command set is leveraged with  
11 Arista's products because we run a similar command  
12 set.

13 Q. But the industry standard, quote/unquote,  
14 command set you were talking about is the IOS CLI  
15 command set from Cisco, correct?

16 A. Well, the industry standard command set  
17 is -- are commands that are widely practiced, but  
18 certainly Cisco, as a dominant player in the  
19 industry, has had a lot of impact. Decisions Cisco  
20 has made about its CLI have certainly impacted  
21 industry standard significantly.

22 Q. So, again, one of the things that you have  
23 said to customers is: You should buy Arista's  
24 switches because our CLI looks like Cisco's CLI,  
25 true?

1       A. Yes, we tell customers that -- that the --  
2 one of the advantages of our switches is that the  
3 training they've made in learning that particular  
4 command set is well leveraged with Arista's products  
5 as well.

6       Q. Now, Arista has its own training program,  
7 does it not?

8       A. Yes, we do.

9       Q. Okay. So Arista goes out and conducts its  
10 own training with customers about how to use the  
11 Arista's CLI interface; is that true?

12      A. Yes.

13      Q. Okay. And I imagine that Arista has its  
14 own training program to teach customers how to use  
15 its eAPI interface?

16      A. I'm not sure if we have a training program  
17 for eAPI. I actually don't think that we do.

18      Q. Okay. How about documentation on that?

19      A. There is documentation, yes.

20      Q. And Arista has its own training program or  
21 documentation to teach customers how to use its  
22 CloudVision interface, correct?

23      A. Yeah, I think we have some documentation,  
24 but no training program that I know of.

25      Q. Okay. Is there anything wrong with having

1 Q. Okay. And sitting here today, you're not  
2 aware of any industry ratified standard that  
3 mandates the use of Cisco's CLI commands, correct?

4 A. I'm not aware of anything like that.

5 Q. Okay. Is there anything that is  
6 nonprivileged that you can share with me to support  
7 the statements that you have set forth in  
8 Exhibit 260 that we have not already discussed?

9 A. There's a lot of statements here.

10 Q. Yeah, take the time to take a look.

11 A. Okay.

12 MR. SILBERT: I object to that question as  
13 calling for a narrative and compound.

14 THE WITNESS: Well, let's see, I mean, if  
15 you start with the first sentence:

16 "In the past few years, the tech  
17 industry has watched with increasing  
18 concern as various entrenched participants  
19 have brandished copyright law as a weapon  
20 to stifle competition and innovation."

21 So certainly there are nonprivileged  
22 materials that would support that statement. We  
23 would have to look at specific media reports about  
24 various lawsuits involving copyright law --  
25 Oracle v. Google comes to mind as the obvious one --